

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**

WASHINGTON, D. C. 20548

M. Esten  
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FILE: B-192982

DATE: February 2, 1979

MATTER OF: Dumont Oscilloscope Laboratories, Inc.

DIGEST: [Protest Not Considered as Issues ARE  
Before a Court of Competent Jurisdiction]

Protest against rejection of proposal because offeror apparently took exception to delivery schedule will not be considered, because material issues involved are before court of competent jurisdiction.

Dumont Oscilloscope Laboratories, Inc. (Dumont) has protested the award of a contract under solicitation No. DAAB07-78-R-2045 issued by the U.S. Army Communications and Electronics Materiel Readiness Command, Fort Monmouth, New Jersey.

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The solicitation, issued February 2, 1978, was amended after a protest by Dumont to the Army to include a partial small business set-aside. Dumont, by letter of August 29, 1978, submitted a best and final offer stating:

"Our projected plans at this time are to complete any existing Government contracts before the delivery schedule of this solicitation commences if we are successful in receiving this award."

Dumont's ability to meet the Army's urgent delivery requirements had been questioned during the earlier protest, but the firm had assured the Army that it could do so. The contracting officer believed the statement in Dumont's best and final offer could be interpreted as taking exception to the delivery schedule in the solicitation. The contracting officer therefore rejected Dumont's proposal and awarded the non-set-aside portion to the next lowest offeror, Tektronix, Inc., a large business, on September 20, 1978. The small business set-aside was dissolved.

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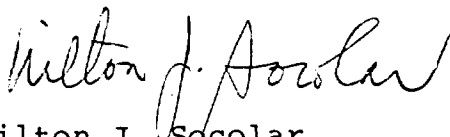
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Dumont filed a protest with our Office on September 25, 1978. By letter of December 18, 1978, counsel for Dumont advised us that "in light of the protracted period" which the Army had taken to respond to our request for a report on the protest, on December 15, 1978, Dumont had filed a complaint in the United States District Court, District of New Jersey. (The Army report had been received by our Office on December 14, 1978.) Dumont sought a declaration that the contract with Tektronix, Inc. was void ab initio. It also asked the court to issue a preliminary injunction, restraining continued performance of the contract, to permanently enjoin award to any firm other than Dumont, and to direct the award of the small business set-aside to Dumont. The grounds of the complaint are the same as those filed in support of Dumont's bid protest.

Counsel for Dumont has stated that the firm desires an opinion by our Office, and suggests that the complaint serve as its comments on the Army report. See our Bid Protest Procedures, 4 C.F.R. 20.3(d) (1978). However, it is our policy not to decide matters where the material issues involved are before a court of competent jurisdiction, unless the court expects, requests, or otherwise expresses interest in receiving our decision. 4 C.F.R. 20.10 (1978). Despite notice of this policy, in the more than a month since the complaint was filed, Dumont has not amended it to request temporary relief pending a decision by our Office. Since the court has not indicated an interest in our views, we will take no further action on this matter. The George Sollitt Construction Company, B-190743, January 9, 1978, 78-1 CPD 17.

Accordingly, the protest is dismissed.

  
Milton J. Socolar  
General Counsel